

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
WARREN C. HAVENS)	
)	
to Provide Automated Maritime)	
Telecommunications System Stations at Various)	File Nos. 852997-853009
Locations in Texas, and)	
)	
At Chaffee, Aspen, Colorado Springs, Copper)	File Nos. 853010-853014
Mountain, and Leadville, Colorado)	

ORDER ON RECONSIDERATION

Adopted: February 17, 2005

Released: February 22, 2005

By the Deputy Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a petition for reconsideration,¹ and a request for leave to file the petition out of time,² submitted by Warren C. Havens (Havens) on December 30, 2004. Havens seeks reconsideration of the November 29, 2004, action by the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (Division), denying his December 3, 2002 petition for Commission action under Section 1.41 of the Commission's Rules,³ and his July 15, 2003 petition for forbearance from or, in the alternative, waiver of the coverage rules in effect at the time the above-captioned applications were dismissed in 2000.⁴ For the reasons that follow, we deny the request for leave and dismiss the petition for reconsideration as untimely.

2. *Background.* Havens filed the above-captioned Automated Maritime Telecommunications System (AMTS) applications in February 2000.⁵ The applications were dismissed between November 2000 and January 2001 because they did not meet the AMTS coverage requirements then in effect.⁶ Havens filed petitions for reconsideration of the dismissals between December 2000 and March 2001.⁷ The petitions for reconsideration were denied between May and October 2001.⁸ Havens filed a petition for further reconsideration of the May 2001 action, which was denied in October 2001.⁹ In November

¹ Petition for Reconsideration (filed Dec. 30, 2004).

² Request for Leave (filed Dec. 30, 2004) (Request for Leave). Havens filed a supplement to the Request for Leave on January 15, 2005. Request for Leave Supplement, and Alternative Request (filed Jan. 15, 2005) (Supplement).

³ 47 C.F.R. § 1.41.

⁴ Warren C. Havens, *Order*, 19 FCC Rcd 23196 (WTB PSCID 2004).

⁵ *See id.* at 23197 ¶¶ 3, 5.

⁶ *See id.* at 23197-98 ¶¶ 4, 6.

⁷ *See id.*

⁸ *See id.*

⁹ *See id.* at 23197 ¶ 4.

2001, Havens filed applications for review of the denials, which the Commission denied in September 2002.¹⁰ Havens appealed the denial of the applications to the United States Court of Appeals for the D.C. Circuit in October 2002, where they remain pending.¹¹

3. In 2002, the Commission amended the AMTS rules to adopt a geographic licensing scheme.¹² On December 3, 2002, Havens filed a petition for Commission action under Section 1.41 of the Commission's Rules, and on July 15, 2003 he filed a petition for forbearance from or, in the alternative, waiver.¹³ The petitions requested that the above-captioned applications be granted either pursuant to the new geographic licensing rules or pursuant to forbearance from or a waiver of the previous rules.¹⁴

4. In an *Order* released November 29, 2004, the Public Safety and Critical Infrastructure Division (Division) denied the petitions.¹⁵ On December 30, 2004, Havens filed the instant petition for reconsideration and request for leave to file the petition for reconsideration out of time. In his request for leave, Havens explains that the petition for reconsideration was filed one day late due to a technical problem beyond his control which delayed the electronic transmission of the petition to Havens's legal counsel.¹⁶ He also indicates that he could not have transmitted the petition to his legal counsel earlier, because the Division released a relevant decision on December 28, 2004, which Havens had to revise the petition to address.¹⁷

6. *Discussion.* Section 405(a) of the Act, as implemented by Section 1.106(f) of the Commission's Rules, requires that a petition for reconsideration be filed within thirty days from the release date of the Commission's action.¹⁸ As Havens recognizes, the instant petition for reconsideration was due December 29, 2004, but not filed until December 30, 2004. The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.¹⁹ Moreover, we note that the Commission has consistently held that it is without authority to extend or waive the statutory thirty-day filing period for filing petitions for reconsideration specified in Section 405(a) of the Communications Act.²⁰ Thus, the precedent cited by Havens concerning late pleading other than petitions for

¹⁰ See *id.* at 23197-98 ¶¶ 4, 6.

¹¹ See *id.*

¹² See *id.* at 23198-99 ¶ 8.

¹³ See *id.* at 23196 ¶ 1.

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See Request for Leave at 1-2.

¹⁷ See *id.* at 2 n.3; Supplement at 2-3.

¹⁸ 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

¹⁹ See, e.g., Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 FCC 2d 909, 909-10 (1975); In the Matter of Memorandum of Agreement Between the Federal Communications Commission and Elkins Institute, Inc., *Order on Reconsideration*, 14 FCC Rcd 5080, 5081 ¶ 3 (WTB 1999).

²⁰ See *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986). See also Petition for Amendment of the Commission's Rules to Establish First and Second Class Radiotelephone Operator Licenses, *Order*, 10 FCC Rcd 3196 (1995).

reconsideration is inapposite.²¹ Consequently, we conclude that the request for leave must be denied, and the petition for reconsideration must be dismissed as untimely filed.²²

8. Accordingly, IT IS ORDERED pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405 (a), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Request for Leave filed by Warren C. Havens on December 30, 2004 IS DENIED, and the Petition for Reconsideration filed by Warren C. Havens on December 30, 2004 IS DISMISSED.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

²¹ See Request for Leave at 2-3.

²² In the last sentence of the Supplement, Havens requests, in the alternative, that the petition for reconsideration be treated as an informal request for Commission action pursuant to Section 1.41 of the Commission's Rules. We deny this request, for the same reasons that we denied Havens's December 3, 2002 request for relief pursuant to Section 1.41. See *Order*, 19 FCC Rcd at 23199-201 ¶¶ 9-13.